

D/L
Item No. 06
10.05.2024
KOLE

**MAT 461 of 2024
With
IA CAN 1 of 2024
With
IA CAN 2 of 2024**

**Jayanta Dey & Ors.
-Vs.-
Pintu Das & Ors.**

*Mr. Sabyasachi Mukherjee,
Mr. Bibek Dey,
Ms. Debarati Chaudhury,
Mr. S. N. Ahmed,
Mr. M. Nandi,*

...for the appellants.

*Mr. Pinaki Dhole,
Ms. Tapati Samanta,*

...for the State.

In Re: CAN 2 of 2024 in MAT 461 of 2024:

The applicants pray for leave to prefer appeal against a judgment and order dated November 24, 2023 (although the date does not appear on the order and the date could be ascertained from a subsequent order dated November 29, 2023), whereby a writ petition being WPA 26459 of 2023 filed by the respondent no. 1 herein (PintuDas), was disposed of by a learned Judge of this Court. The applicants were not parties to the writ petition. However, they say that they should have been impleaded as respondents in the writ petition since steps for demolition of the unauthorized construction made by Pintu Das, were taken by Kolkata Municipal Corporation (in short 'KMC') on the basis of a complaint lodged by the applicants. They say that the unauthorized construction raised by Pintu has blocked the

entrance to their premises and is otherwise threatening to compromise the safety of their premises.

Having heard learned Counsel for the applicants, we are satisfied that the applicants have sufficient *locus standi* to prefer appeal against the order dated November 24, 2023. Leave is granted to prefer appeal.

CAN 2 of 2024 in MAT 461 of 2024 is, accordingly, allowed.

In Re: CAN 1 of 2024 in MAT 461 of 2024:

Although this application has been filed for condonation of delay in presenting the appeal, as per the noting of the Stamp Reporter, there is no delay.

CAN 1 of 2024 in MAT 461 of 2024 is, accordingly, disposed of.

In Re: MAT 461 of 2024:

From the affidavit of service filed in court today, it appears that the respondents have been served. However, nobody appears for the respondents.

The respondent no. 1 herein, i.e., Pintu Das, (in short ‘Pintu’) approached the learned Single Judge by filing WPA 26459 of 2023, challenging the action taken by KMC for demolition of a construction which, according to KMC, was unauthorized. It was submitted before the learned Single Judge that representations had been made repeatedly to officers of KMC but in vain. KMC has already demolished part of the impugned construction. It was submitted that the demolition activities had been undertaken without granting

an opportunity of hearing to Pintu. The alleged illegal construction measures about 300 sq. ft.

On behalf of KMC, it was submitted that the emergency provisions of Section 400(8) of the KMC Act, 1980, were invoked. The impugned construction is not supported by any sanctioned plan. Since action was taken under Section 400(8) of the KMC Act, no opportunity of hearing was required to be granted to the persons responsible.

The learned Judge disposed of the writ petition with the following observations and directions:-

“It appears from the submissions made on behalf of both the parties that part demolition has already taken place. The constructed area, according to the petitioner, is 300 sq. ft.

The Executive Engineer is directed to cause further spot inspection to ascertain as to whether the balance demolition work is required to be executed or not. The inspection shall be made upon prior notice to the petitioner as well as the complainant who is the brother of the petitioner.

After inspection is conducted, the report of spot inspection shall be circulated amongst all the parties. If the Executive Engineer is of the opinion that the balance construction work is required to be demolished, then necessary steps shall be taken for demolition of the same. If there is scope to regularize the balance construction work, then steps shall be taken in accordance with law.

Till a decision is taken by the concerned Executive Engineer in accordance with the direction passed hereinabove, further demolition need not be conducted.”

The appellants say that since the proceedings were initiated by KMC on the basis of complaint lodged by the

appellants, Pintu should have impleaded the appellants as party respondents in the writ petition. Since he did not do so, the learned Judge ought to have added them as parties so that they could make their submissions before the learned Judge. The unauthorized construction raised by Pintu has encroached upon the passage giving entry to the premises of the appellants. Even otherwise, the unauthorized construction made by Pintu may collapse and damage the appellants' property.

We do not think that it was necessary for the learned Judge to implead the present appellants as respondents in the writ petition. The learned Judge recorded that KMC had taken action on the basis of complaint made by the 'brother of the writ petitioner'. The learned Judge directed the Executive Engineer to cause further spot inspection upon notice to the writ petitioner and the 'brother of the petitioner'. The brother of the petitioner obviously refers to the present appellants.

We are told that the appellants have not received any notice of local inspection till date. We direct the concerned Executive Engineer to carry out local inspection upon notice to the appellants herein and the writ petitioner and take steps in accordance with the directions contained in the order of the learned Single Judge.

We further grant liberty to the appellants to make a comprehensive representation to the competent authority in KMC ventilating the appellants' grievance regarding the unauthorized construction and the inconvenience that the

appellants may be facing by reason of such construction. If such representation is made within a week from date, the concerned officer in KMC shall decide the same in accordance with law observing the principles of natural justice by passing a reasoned order within six weeks from the date of receipt of the representation.

The appeal stands disposed of.

Let the appellants communicate this order to the concerned Executive Engineer of KMC for him to take action.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)